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Supreme Court, U.S.
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No. 02-1642

In The

Supreme Court of the United States

THOMAS JEFFERSON UNIVERSITY HOSPITAL
AND PHILIP HIRSHMAN, M.D.,

Petitioners,

v.

DIANE BYNUM AND FOUNTAIN PARRISH,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Pennsylvania

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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5 pp

OBJECTION TO QUESTIONS PRESENTED FOR REVIEW

1. Plaintiffs object to the assertion contained in Question 1 that they put into evidence, either directly or indirectly the evidence of the prior abortion. In fact, the plaintiffs objected to said evidence which preserved the issue for appeal before the Pennsylvania Appellate Courts.

   Plaintiffs further object to the assertion contained in Question 1 that plaintiffs made " . . . serious allegations of fraud and conspiracy . . . ". Plaintiffs have never made such an allegations.

2. Plaintiffs object to the assertion contained in Question 2 that they alleged any conspiracy theory in this matter.

3. Plaintiffs object to the assertion contained in Question 3 that the December 20, 1996 record in question contained a direct reference to abortion or that the plaintiffs put the record into evidence by alleging that the defendants fraudulently altered the medical records. No such assertion was alleged.

COUNTER-STATEMENT OF FACTUAL HISTORY

Misstatements of Facts

The prevailing argument throughout the defendants' Petition for a Writ of Certiorari is the allegation that the plaintiffs asserted a "fraudulent conspiracy to alter the medical records theory" including an allegation that Dr. Hirshman returned to Thomas Jefferson University Hospital (TJUH) at some point in order to alter the records. (Defendants' Petition at page 6.) This is not only pure sophistry but an actual false statement. The testimony in question occurred during the first trial as follows:

> [Mr. Britton] Q. So are you suggesting after the lawsuit was filed which I believe was March of 1998, March of 1998, two years later, that D. Hirshman went back and falsified these records. Is that what you are suggesting?
>
> [Diane Bynum] A. I don't know when he did it. He wasn't in the room doing this in front of me. I know that I am telling the truth. I know I have the truth on my side. I don't know when he put these things on this chart. It doesn't have any of my name or nothing stamped on here. So when was it put on there?

April 11, 2000, Notes of Testimony, Bynum, et al. vs. Thomas Jefferson University Hospital, et al., Pg. 9.

Testimony on the issue in the second trial:

> [Mr. Britton] Q. So that your testimony, to the extent that the hospital records and Dr. Hirschman's record is inconsistent or proved to be inconsistent with what you say, your belief is that this was put together after this lawsuit was filed by you; correct?

> [Diane Bynum] A. I'm going to say no. My assumption of it is that – all I know is the records that you showed me in front of me has one thing. I know what happened at my visit, what the doctor said to me, and what happened. They don't coincide with the records.

June 5, 2003, Notes of Testimony, Bynum, et al. vs. Thomas Jefferson University Hospital, et al., Pg. 165.

The sole issue in the case, as pointed out by the Pennsylvania Superior Court and agreed to by the defendants on page six of its herein Petition, is whether Ms. Bynum did, in fact, advise Dr. Hirshman on December 20, 1996, that she had been experiencing decreased fetal movement. The fact that her testimony differs from the medical records does not equate to the plaintiffs asserting a fraudulent conspiracy to alter the medical records.

Finally, the defendants' assertion that the December 20, 1996 medical record "clearly documented her history of abortion" is again false. The word "abortion" does not appear anywhere on the document. Quoting from the Opinion of the Pennsylvania Superior Court as it appears on page 10a of the defendants' Petition: *"The fact that the medical history form correctly reflected the number "3" in the prior pregnancy box does not provide any relevant information to the issues in this case."*

CONCLUSION

For the foregoing reasons and in the interest of justice, Diane Bynum and Fountain Parrish respectfully request that this Court deny the instant Petition and decline to accept the appeal.

Respectfully submitted,

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